

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS

HOWLAND 3 INVESTMENTS, LLC,  
EASY STREET AUTO WASH, INC., and  
JEFF MCCARTY,

Plaintiffs,

v.

HERITAGE COAL COMPANY, LLC,  
PEABODY COAL COMPANY, LLC,  
PEABODY COAL COMPANY, a  
corporation, and PEABODY HOLDING  
COMPANY, INC.,

Defendants.

Case No. 09-cv-451-JPG

**MEMORANDUM AND ORDER**

This matter comes before the Court on Plaintiffs' Motion to Voluntarily Dismiss (Doc. 17) Defendants Peabody Coal Company, LLC, and Peabody Coal Company, a corporation, pursuant to Federal Rule of Civil Procedure 41(a)(2). Rule 41(a)(2) provides that only the Court may dismiss an action after an adverse party has filed an answer or motion for summary judgment and in the absence of a stipulation of dismissal of an entire case signed by all parties.

Plaintiffs have been advised that Defendants Peabody Coal Company, LLC, and Peabody Coal Company, a corporation, do not currently exist. Rather, these entities are names by which Defendant, Heritage Coal Company, LLC, was formerly known. Plaintiffs have conferred with Defendants' counsel, who have no objections. Because the Court has authority to dismiss the action against the currently non-existent Defendants under Federal Rule of Civil Procedure 41(a)(2), the Court hereby **GRANTS** the Motion to Voluntarily Dismiss (Doc. 17) and **DISMISSES without prejudice** Defendants Peabody Coal Company, LLC, and Peabody Coal Company, a corporation.

**IT IS SO ORDERED.**  
**DATED: August 20, 2009**

s/ J. Phil Gilbert  
**J. PHIL GILBERT**  
**DISTRICT JUDGE**